

OCT 13 1978 11:10

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1666 K STREET, N.W.

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October 13, 1978

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ARTHUR Z. GARDINER, JR.
WILLIAM C. GIFFORD
COUNSEL

Dear Mr. Homme:

On behalf of Itel Corporation I am submitting for filing and recording under Section 20c of the Interstate Commerce Act six (6) executed counterparts of a Lease of Railroad Equipment dated as of October 1, 1978. The parties to this Lease are:

Wells Fargo Transport Leasing Corporation, as
Lessor
425 California Street
San Francisco, California 94104

Itel Corporation, acting through its Rail Division,
as Lessee
Two Embarcadero Center
San Francisco, California.

The said Lease leases for a term specified the following Equipment:

100 - 70-ton 89'4" all purpose flat cars, bearing identifying numbers PW 105101 through 105200, both inclusive.

Please cross-index this Lease against the Interim Purchase Money Security Agreement and the related Assignment of Purchase Agreement, both filed simultaneously under Recordation Nos. 97 and 9759-A, respectively.

No.

Date OCT 13 1978

Fee \$ 20.00

ICC, Washington, D. C.

Counterparts - Deane W. Kelley

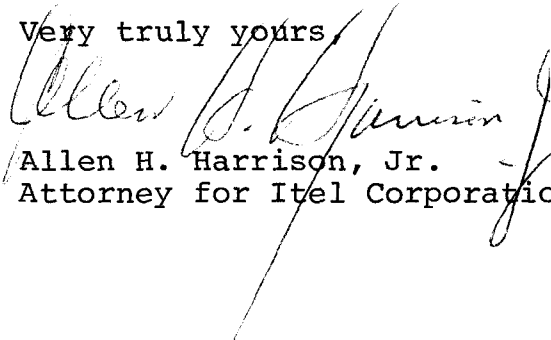
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I.C.C.
OPERATION

Also, please cross-index this filing under the Providence and Worcester Railroad Company.

Enclosed is a check for \$50.00 in payment of the recording fee for the Lease, and a \$20.00 check to cover the fee for the two requested cross-indexings.

Once the filing has been made, please return to bearer the stamped counterparts of the Lease not required for filing purposes, the fee receipt and the letter from the Interstate Commerce Commission acknowledging the filing, together with stamped extra copies of this letter of transmittal.

Very truly yours,


Allen H. Harrison, Jr.
Attorney for ITEL Corporation

Mr. H. Gordon Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Encs.

BY HAND

Interstate Commerce Commission
Washington, D.C. 20423

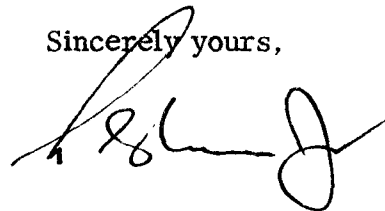
OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.,
Wilmer, Cutler & Pickering
1666 K Street, N. W.
Washington, D. C. 20006

Dear Mr. Harrison:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on October 13, 1978 at 11:10 am ,
and assigned recordation number(s) 9760

Sincerely yours,

A handwritten signature in black ink, appearing to read 'H.G. Homme, Jr.', with a stylized flourish at the end.

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9760 Filed 1425

OCT 18 1978 - 11 44 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

dated as of October 1, 1978

between

WELLS FARGO TRANSPORT LEASING CORPORATION,
as Lessor

and

ITEL CORPORATION, acting through its
Rail Division,
as Lessee

[100 Flatcars Manufactured by ACF Industries Incorporated]

[Number 3139904]

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SCHEDULES

- A. Units
- B. Casualty Values

EXHIBITS

- I. Form of Certificate of Acceptance
- II. Form of Assignment of Purchase Agreement
- III. Form of Consent of Builder
- IV. Certain Additional Information To Be Provided In A
Composite Certificate of Acceptance

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1978, between WELLS FARGO TRANSPORT LEASING CORPORATION, a California corporation (hereinafter called the Lessor), and ITEL CORPORATION (acting through its Rail Division), a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessee has assigned to the Lessor, pursuant to an Assignment of Purchase Agreement dated as of the date hereof (hereinafter called the Assignment), its interests in a contract dated February 24, 1978 (hereinafter called the Purchase Agreement) between the Lessee and ACF Industries Incorporated (hereinafter called the Builder), for the manufacture and sale of railroad equipment;

WHEREAS, the Builder has consented to the Assignment pursuant to a Consent to Assignment dated as of the date hereof (hereinafter called the Consent) and the Lessor has accepted the Assignment and proposes to purchase from the Builder such of the units of railroad equipment being manufactured by the Builder pursuant to the Purchase Agreement and described in Schedule A hereto (hereinafter called the Units) as are delivered and accepted under this Lease; and

WHEREAS, the Lessee desires to lease such of the Units as are so delivered and accepted hereunder at the rentals, upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants to be performed by the Lessee, the Lessor hereby leases the Units to the Lessee, upon the terms and subject to the conditions hereinafter set forth:

§ 1. Delivery and Acceptance. The Lessor hereby appoints the Lessee as its agent for inspection and acceptance of the Units from the Builder under the Purchase Agreement. The Lessee will cause an agent or employee of the Lessee to inspect each Unit and if such Unit is found to be acceptable, to execute and deliver to the Lessor a certificate of acceptance substantially in the form attached hereto as Exhibit I (hereinafter called a Certificate of Acceptance). Upon the delivery of a Certificate of Acceptance and the satisfaction of the other conditions set forth in § 2 hereof with respect to any Unit, such Unit shall be deemed to have been accepted by the Lessee and shall become subject to this Lease. The Lessor shall have no obligation to purchase and lease to the Lessee any Units delivered to or accepted by the Lessee subsequent to December

29, 1978. The Lessor shall reassign to the Lessee promptly after December 29, 1978 its rights under the Assignment to purchase any Units which have not theretofore been so delivered and accepted.

§ 2. Conditions Precedent. The obligation of the Lessor to purchase and pay for the Units pursuant to the Purchase Agreement and to deliver them to the Lessee pursuant to § 1 hereof is subject to satisfaction of the following conditions:

(a) On or before the date on which any Units are delivered and accepted pursuant to § 1 hereof the Lessor shall have received the following documents, in form and substance satisfactory to Messrs. Heller, Ehrman, White & McAuliffe, special counsel for the Lessor:

(i) a duly executed copy of this Lease, designated as the original hereof;

(ii) evidence that this Lease, the Assignment and the Sublease have been filed and recorded with the ICC;

(iii) an acknowledgment copy of a financing statement on form UCC-1 filed in the office of the Secretary of State of the State of California with respect to the assignment of the Sublease set forth in § 22 hereof, indicating the Lessee, as debtor, and the Lessor, as secured party, duly stamped by a filing officer to indicate the date and time of filing and the filing number;

(iv) a counterpart of the Purchase Agreement, duly executed by the Lessee and the Builder;

(v) a counterpart of the Assignment, duly executed by the Lessee, substantially in the form of Exhibit II hereto;

(vi) a counterpart of the Consent, duly executed by the Builder, substantially in the form of Exhibit III hereto;

(vii) certificates of insurance required to be delivered by the Lessee pursuant to § 9 hereof;

(viii) a certificate of an officer of the Lessee dated the date of such delivery as to a true and correct copy of the resolutions duly adopted by the Lessee's board of directors (or the executive committee thereof), authorizing the execution, delivery and performance of this Lease and the transactions contemplated hereby, being attached thereto, their not having been amended or modified and remaining in full force and effect, and the incumbency and specimen signatures of any officers of the Lessee executing this Lease, the Assignment, the Purchase Agreement, the Sublease and any other documents or instruments contemplated hereby;

(ix) an opinion of Messrs. Wilmer, Cutler & Pickering, special ICC counsel for the Lessor and the Lessee, dated a recent date, to the effect that no filing or recordation other than that referred to in subclause (a)(xi) D of this § 2 has been made at the ICC with respect to any of the Units or the Sublease (as it relates to the Units);

(x) a certificate dated such date of an executive officer of the Lessee to the effect that:

A. no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default has occurred and is continuing;

B. each of representations and warranties of the Lessee set forth in § 20 hereof is true and correct as of such date with the same force and effect as if it had been made on such date;

C. each Unit is new and has not been placed in service or otherwise used by the Lessee (or any other person) prior to the delivery and acceptance thereof pursuant to § 1 of this Lease;

(xi) an opinion of counsel for the Lessee dated such date addressed to the Lessor, and in form and substance satisfactory to special counsel for the Lessor, to the effect that:

A. the Lessee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate power and authority to own its properties and to carry on its business as presently conducted and is duly qualified to do business and in good standing in each jurisdiction in which the failure to so qualify would materially adversely affect the financial condition of the Lessee or its ability to perform its obligations under this Lease or the Lessor's right, title and interest under this Lease or in any of the Units or the right of the Lessor to enforce the same;

B. except as disclosed in this Lease, to the knowledge of such counsel, there are no actions at law or in equity pending or threatened, by or against (whether or not purportedly on behalf of the Lessee), or affecting the Lessee or any of its subsidiaries or properties or proceedings by or before any governmental commission, bureau or other administrative agency pending or threatened against the Lessee which, in either case, if adversely determined would have a material adverse effect upon the business or property of the Lessee and its subsidiaries, on a consolidated basis, or the Lessee's ability to perform its obligations under this Lease;

C. the Lessee has all requisite corporate power to execute and deliver this Lease, the Purchase Agreement, the Assignment and the Sublease, and to perform its obligations under each thereof; this Lease, the Purchase Agreement, the Assignment and the Sublease have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution, and delivery thereof by the other parties thereto, constitute legal and valid obligations, binding upon the Lessee, enforceable in accordance with their respective terms, subject, as to the enforcement of remedies,

to applicable bankruptcy, moratorium and insolvency laws and other similar laws affecting creditors' rights generally and to laws or judicial decisions limiting the right of specific performance;

D. (X) except for the filing, registering or recording of the Lease, the Assignment and the Sublease with the ICC in accordance with Section 20c of the Interstate Commerce Act (the "Act") and subject to the effect of the lease between Lessee and The Provident and Worcester Company, and to the effect of liens which do not appear in the records maintained by the ICC pursuant to Section 20c of the Act (and such counsel is not aware of any such liens), no other act, filing, recording or deposit (or giving of notice) is necessary to protect the right, title and interest of the Lessor under this Lease and in and to the Units in any State of the United States of America or the District of Columbia; (Y) a financing statement on form UCC-1 has been filed with the Secretary of State of the State of California with respect to the Units and the assignment of the Sublease included in § 22 of this Lease and the Lessor has a duly perfected first and prior security interest in the Units and the Sublease; (Z) the Lease and the Sublease have been deposited in the office of the Registrar General of Canada and upon publication of notice of such deposit (which has been effected or in respect of which due provision has been made) in THE CANADA GAZETTE in accordance with Section 86 of the Railway Act of Canada (1970-RSC) no other act, filing, recording or deposit (or giving of notice) in respect of this Lease or the Sublease is necessary in order to protect the interests thereunder of the Lessor in and to the Units in Canada, subject to a qualification as to the effectiveness of such deposit and publication with respect to this Lease, except to the extent it constitutes an assignment of the Sublease;

E. the execution, delivery and performance of this Lease by the Lessee will not conflict with, result in a breach of, or constitute a default under, the corporate charter or by-laws of the Lessee or, to the knowledge of such counsel, any provision of law, any regulation, order, writ, injunction or decree of any court or governmental instrumentality, any note, indenture, mortgage, deed of trust, equipment trust agreement, conditional sale agreement, material lease or other agreement or instrument to which the Lessee is a party or by which its property may be bound;

F. no authorization or approval is required from any governmental agency or commission or any public or quasi-public body or authority with respect to the execution, delivery or performance by the Lessee of this Lease or for the validity or enforceability thereof against the Lessee; and

G. to the knowledge of such counsel, the Lessee is not in default in any material respect with respect to any order, writ, injunction or decree of any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

(In giving the opinion referred to in subclause (a)(xi)D(Z) above, such counsel may rely upon an opinion of Messrs. McCarthy & McCarthy, special Canadian counsel for the Lessee, if such opinion is delivered to the Lessor and is satisfactory in form and substance to the Lessor. In giving the opinion as to due qualification of the Lessee to do business referred to in subclause (a)(xi)A above, such counsel may base its opinion upon good standing telegrams received by it during July 1978.)

(xii) such other opinions of counsel and further assurances with respect to this Lease as the Lessor or its special counsel may reasonably request;

(xiii) a Certificate of Acceptance with respect to such Unit, as contemplated by § 1 hereof;

(xiv) a bill of sale from the Builder transferring to the Lessor all of the Builder's right, title and interest in and to such Unit and undertaking to defend the title of the Lessor to such Unit against all claims by, through or under the Builder; and

(xv) an invoice of the Builder addressed to the Lessor for such Unit, accompanied by, or having endorsed thereon, a certification of the Lessee as to its approval of payment of the amount set forth therein.

(b) The aggregate Purchase Price for such Unit and all Units theretofore delivered and accepted hereunder shall not exceed \$4,500,000;

(c) The date of delivery and acceptance of such Unit shall be not later than December 29, 1978.

(d) No legislative change shall have been made by any Federal, state or local governmental or taxing authority to which the Lessor is subject in the income tax rate or the income tax laws in effect on the date hereof, which, in the reasonable opinion of the Lessor, would have an adverse economic effect upon the transaction contemplated by this Lease.

§ 3. Rent.

(a) Basic Rental. The Lessee agrees to pay to the Lessor, as basic rental for each Unit subject to this Lease, 60 consecutive quarterly installments in advance, each in the amount of 2.375% of the Purchase Price (as hereinafter defined) of such Unit. The amount of each such quarterly payment may be adjusted as provided in § 21 hereof. The first such installment of basic rental for such Units shall be payable on the earliest of the following dates (the "Base Term Lease Commencement Date"):

(i) December 29, 1978;

(ii) the day on which the Lessor has paid the Purchase Price for all of the Units to the Builder.

Each of the remaining installments shall be payable three months after the date on which the immediately preceding installment was payable.

(b) Interim Rental. The Lessee shall pay the Lessor on the Base Term Lease Commencement Date as interim rental for each Unit an amount equal to the Purchase Price of such Unit, multiplied by (A) the rate of Wells Fargo Bank, N.A. in effect from time to time for prime commercial loans of 90 day maturities, multiplied by (B) the number of days from and including the Interim Rental Commencement Date for such Unit to, but excluding, the Base Term Lease Commencement Date, divided by (C) three hundred and sixty-five (365). The Interim Rental Commencement Date for any Unit shall be the date the Lessor pays the Purchase Price for such Unit. Notwithstanding anything contained to the contrary in the Purchase Agreement, but subject to § 2 hereof, the Lessor shall pay the Builder every thirty days, commencing thirty days from the date of delivery of the first Unit to be delivered, for all Units theretofore delivered by the Builder and accepted by the Lessee pursuant to § 1 hereof and not theretofore paid for by the Lessor.

The Lessee shall deliver to the Lessor on the Base Term Lease Commencement Date a Certificate of Acceptance for all Units, executed by an appropriate officer of the Lessee, substantially in the form attached hereto as Exhibit I, but with the additional information required by Exhibit IV attached hereto.

For the purpose hereof, "Purchase Price" shall mean, with respect to any Unit, the sum of (i) the base price of such Unit set forth in Schedule A hereto, which is subject to increase or decrease upon the agreement of the Builder, the Lessor and the Lessee, and (ii) applicable sales, use or similar taxes and freight or handling charges. For the purpose hereof, the term "rent" or "rental" shall mean basic rental and interim rental.

If any of the quarterly rental payment dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. For the purpose hereof, "business day" shall mean any calendar day, other than a Saturday, Sunday or day on which both Bank of America, N.T. & S.A. and Wells Fargo Bank, N.A. remained closed in San Francisco, California.

All payments provided for in this Lease shall be made at the Lessor's office at 425 California Street, San Francisco, California or at such other place as the Lessor shall from time to time specify in writing. The Lessee agrees to make each payment provided for herein in funds immediately available in San Francisco, California.

§ 4. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts payable hereunder is absolute and unconditional. The Lessee shall not be entitled to any abatement or reduction of rent or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, against the Builder or otherwise, except insofar as this Lease may be terminated pursuant to the express provisions hereof. All rental and other payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection and other charges. Except as otherwise, expressly provided herein, this Lease shall not terminate, and the respective obligations of the Lessor and the Lessee shall not be affected, by reason of any defect in, damage to, loss of possession or use of or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding by or against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the stated intention of the parties hereto that all rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease with respect to all or any of the Units, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 5. Term. The term of this Lease for each Unit shall include the Interim Term and the Base Term.

(a) Interim Term. The Interim Term of this Lease as to each Unit shall begin on the date such Unit is delivered and accepted as provided in § 1 hereof and shall end on the day immediately preceding the Base Term Lease Commencement Date.

(b) Base Term. The Base Term of this Lease as to each Unit shall begin on the Base Term Lease Commencement Date for such Unit and, subject to the provisions of §§ 8, 16, and 23 hereof, shall terminate 15 years thereafter. The obligations of the Lessee (including, but not limited to, its obligations under §§ 7, 8, 9, 14, 17, 19 and 21 hereof) shall survive the expiration of the term of this Lease.

§ 6. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto or, in the case of any Unit not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "WELLS FARGO TRANSPORT LEASING CORPORATION, OWNER AND LESSOR UNDER A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes and additions thereto as from time to time may be required by law in order to protect the Lessor's right and title to such Unit and the rights of the Lessor under this Lease. The Lessee will not place in operation or exercise any control or dominion over any Unit under this Lease until such words shall have been so marked on both sides thereof and will replace promptly any of such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of the new number or numbers to be substituted therefor shall have been delivered to the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect set forth in subclauses (a)(ix) and (a)(xi)(D) of § 2 hereof in respect of such statement.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials of, or other insignia customarily used by, the Lessee and its sublessees permitted by § 22 hereof.

§ 7. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor with respect to, and the Lessee hereby agrees to pay when due, the amount of any local, state, Federal or foreign taxes or foreign withholdings or certification, registration or license fees, assessments

duties, charges, fines or penalties now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale (except a sale of the Lessor's interest in the Units), rental, use, payment, shipment, delivery, maintenance, repair, condition, return or other disposition of any Unit under the terms of this Lease (all such expenses, taxes, withholdings, certification, registration and license fees, assessments, duties, charges, fines and penalties being hereinafter called Impositions). The Lessee assumes and agrees to pay when due all Impositions in addition to all other payments required to be made by it pursuant hereto and agrees to indemnify, protect, defend, save and keep harmless, on an after tax basis, the Lessor against all Impositions. Lessor agrees to provide Lessee with notice of any impositions directed to the attention of Lessor.

Notwithstanding anything contained in this § 7 to the contrary, the Lessee's obligation to pay Impositions shall not, except as specifically provided in § 21 hereof, include (i) any Federal income tax payable by the Lessor as a consequence of the receipt of payments provided for herein, or (ii) any income taxes or franchise taxes measured by net income based on such receipts imposed on the Lessor by the state and city in which the Lessor has its principal place of business, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse pursuant hereto.

The Lessee will also pay promptly all Impositions that may be imposed upon any Unit or for the use, maintenance or operation thereof or upon the earnings arising therefrom (except as provided in the immediately preceding sentence) or upon the Lessor by reason of its purchase or ownership thereof, and will keep at all times all and every part of the Units free and clear of all Impositions that might in any way affect the title of the Lessor in and to any Unit or its interests or rights under this Lease; provided, however, that the Lessee shall be under no obligation to pay any Imposition so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title of the Lessor to any Unit or the interest or rights of the Lessor hereunder. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor promptly upon presentation of an invoice therefor.

The Lessor agrees that if, in the reasonable opinion of independent tax counsel selected by the Lessor and acceptable

to the Lessee (and whose fees and expenses shall be paid by the Lessee), a bona fide claim exists for a refund of all or a portion of any Imposition in respect of which the Lessee has made payment to the Lessor, the Lessor shall, upon the request, and at the sole expense, of the Lessee, take all such reasonable legal or other action deemed appropriate by such counsel in order to sustain such claim. The Lessor shall not be obligated to take any such action unless the Lessee shall first have provided indemnification satisfactory to the Lessor for all liabilities and expenses (including fees and disbursements of counsel) which may be entailed therein. The Lessee shall be entitled to the proceeds of the successful prosecution of any such claim to the extent of payments or reimbursement made by the Lessee pursuant to this § 7.

In the event any reports with respect to Impositions are required to be made, the Lessee will, at its own cost and expense, make such reports in such manner as to show the interest of the Lessor as the owner of the Units and notify the Lessor thereof; provided, however, that if the Lessee is not permitted to make such reports on behalf of the Lessor, it will so notify the Lessor and will furnish the Lessor with all information necessary for the Lessor to make such reports.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 7. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition pursuant to this § 7, such liability shall continue, notwithstanding the termination of this Lease, until it has been paid or reimbursed by the Lessee.

§ 8. Casualty Occurrences. In the event that during the term of this Lease or prior to the return of such Unit pursuant to § 17 or § 19 hereof, as the case may be, any Unit shall become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or the title thereto or use thereof shall be taken or requisitioned in the manner described in the next succeeding paragraph of this § 8 (any such occurrence being hereinafter called a Casualty Occurrence), the Lessee shall promptly notify the Lessor in writing with respect thereto. On the rental payment date next succeeding

such notice the Lessee shall pay to the Lessor an amount equal to the accrued but unpaid rental in respect of such Unit due to but not including such rental payment date, plus an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such Casualty Occurrence. Upon the making of such a payment by the Lessee in respect of any Unit and the payment of any other amounts then due hereunder, the rental for such Unit shall cease to accrue, this Lease shall thereupon terminate with respect to such Unit, and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The taking or requisition (by condemnation or otherwise under authority of law) of the title to or use of any Unit shall constitute a Casualty Occurrence, if:

(i) title to such Unit is taken or requisitioned by any governmental authority;

(ii) use of such Unit is taken or requisitioned by any foreign government or political subdivision or agency thereof for any period, whether of definite or indefinite duration;

(iii) use of such Unit is taken or requisition by the government (or any agency thereof) of the United States of America or any State thereof for a stated period which exceeds 90 days or extends beyond the term of this Lease and the Lessor notifies the Lessee in writing that such taking or condemnation constitutes a Casualty Occurrence; or

(iv) use of such Unit is taken or requisition by the government (or any agency thereof) of the United States of America or any State thereof for an indefinite period which in fact lasts for not less than 90 days or until beyond the term of this Lease and the Lessor notifies the Lessee in writing that such taking or condemnation constitutes a Casualty Occurrence.

The Lessee shall give the Lessor prompt written notice of any taking or requisition of any Unit, whether or not under authority of law and whether or not then constituting a Casualty Occurrence

In the event that any Unit is taken or requisitioned by condemnation or otherwise under authority of law but such taking or requisition does not constitute a Casualty Occurrence,

all of the Lessee's obligations under this Lease with respect to such Unit, including, but not limited to, payment of rent pursuant to § 3 hereof, shall continue in full force and effect as if such taking or requisition had not occurred. Provided that no Event of Default (as defined in § 16 hereof) or other event which with the giving of notice or passage of time or both would become an Event of Default shall have occurred and be continuing, all payments received by the Lessor or the Lessee with respect to such taking or requisition of such Unit not constituting a Casualty Occurrence during the term of this Lease shall be paid over to, or retained by, the Lessee.

Following the payment by the Lessee of the Casualty Value of any Unit suffering a Casualty Occurrence arising from a taking or requisition of such Unit, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 19 hereof.

Notwithstanding the foregoing to the contrary, if a Casualty Occurrence has occurred because any Unit is worn out, destroyed or irreparably damaged, then upon payment to the Lessor by the Lessee of the Casualty Value for such Unit, the Lessor shall transfer title to such Unit to the Lessee on an "as is, where is" basis, without recourse or warranty and the Lessee shall not be obligated to dispose of such Unit as aforesaid; provided, however, that insurance and other proceeds (other than from a sale of such Unit by the Lessee) for such Unit in excess of the Casualty Value therefor shall be paid to the Lessor.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, except as otherwise provided in the immediately preceding paragraph, before and after expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that

the Lessee has previously paid the Casualty Value to the Lessor the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor.

For the purpose hereof, the "Casualty Value" of each Unit as of any date shall be the percentage of the Purchase Price of such Unit set forth in Schedule B hereto with respect to such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final rental payment has been made pursuant to § 3 hereof and before such Unit shall have been returned pursuant to § 19 hereof, the Lessee shall promptly notify the Lessor with respect thereto and pay to the Lessor, on the earlier of 15 business days after such notice or 5 business days after the expiration of the term of this Lease, for such Unit, an amount equal to the Casualty Value of such Unit, as of the date on which such Casualty Occurrence occurred.

Except as otherwise provided in this § 8, the Lessee shall not be released from any of its obligations under this Lease in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit which has become subject to this Lease.

§ 9. Insurance. The Lessee will at its sole cost and expense maintain or cause to be maintained at all times during the term of this Lease (and thereafter so long as any Unit is at the risk of the Lessee), physical damage and public liability insurance covering the Units in the names of the Lessor and the Lessee and in such amounts, with such insurers and with such coverages and deductibles, if any, as shall be satisfactory to the Lessor and consistent with prudent industry practice by lessees of similar equipment owned or leased by railroads. The Lessee shall deliver to the Lessor on or prior to the date on which the first Units are delivered and accepted pursuant to § 1 hereof and at such other times during the term of this Lease as the Lessor may request a certificate of insurance for each policy of insurance so maintained.

Without limiting the foregoing, each such insurance policy shall provide that it will not be invalidated as against the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or cancelled by the insurer only upon thirty days' written notice to the Lessor. All public liability policies shall name the Lessor as an insured. All policies covering loss or damage to the Units shall provide that payment thereunder shall be made to the Lessor.

If the Lessee shall fail to maintain insurance satisfactory to the Lessor, the Lessor may procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all outlays for such insurance with interest thereon computed at the rate specified in § 24 hereof.

Any insurance proceeds as the result of insurance carried by the Lessee and any amounts received (unless paid to an insurer) in settlement from a railroad under the interchange rules of the Association of American Railroads (hereinafter called the AAR) in respect of Units suffering a Casualty Occurrence shall be deducted from the Casualty Value payable by the Lessee to the Lessor in respect of such Casualty Occurrence pursuant to § 8 hereof. If the Lessor shall receive any such insurance proceeds, settlement amounts or condemnation payments after the Lessee shall have paid to the Lessor the Casualty Value with respect to a Unit pursuant to § 8 hereof without deduction for such insurance proceeds, such settlement amounts or condemnation payments, the Lessor shall pay such insurance proceeds, settlement amounts or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to such Unit and any balance of such insurance proceeds, settlement amounts or condemnation payments shall remain the property of the Lessor. Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, all insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 10. Reports; Financial Statements. On or before March 31 in each year, commencing March 31, 1980, the Lessee will furnish the Lessor a statement (i) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the identifying numbers and markings required by § 6 hereof have been preserved or replaced and (iii) stating that the Lessee has performed or caused to be performed its maintenance obligations for each Unit pursuant to

§ 13 hereof. The Lessor shall have the right, at its expense and risk, by its employees or agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish the Lessor (i) upon request, within 60 days after the end of each of the first three fiscal quarters of the Lessee, a consolidated balance sheet of the Lessee as at the end of such quarter in comparative form with the preceding year's corresponding fiscal quarter, together with the related consolidated statements of income, retained earnings and changes in financial position for the portion of such fiscal year then ended, all in reasonable detail and certified by a responsible officer of the Lessee as having been prepared in accordance with generally accepted accounting principles consistently applied and (ii) as soon as available, and in any event within 120 days after the end of each fiscal year of the Lessee, the consolidated balance sheet of the Lessee as at the end of such fiscal year in comparative form with the preceding fiscal year, together with the related consolidated statements of income, retained earnings and changes in financial position for such fiscal year, all in reasonable detail and prepared in accordance with generally accepted accounting principles consistently applied, which shall be accompanied by a report and opinion of independent certified public accountants of recognized national standing selected by the Lessee, which report and opinion shall be based upon an examination made in accordance with generally accepted auditing standards, and (iii) from time to time such other information as the Lessor may reasonably request.

§ 11. Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, ANY UNIT. THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY UNIT FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO ANY UNIT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE. All risks as to such matters shall be borne, as between the Lessor and the Lessee, by the Lessee. During the term of this Lease, the Lessor shall have no responsibility or liability to the Lessee or any other person with respect to: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein (whether latent or patent) or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit

or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit.

For so long as no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder pursuant to the Purchase Agreement. The Lessee's delivery of a Certificate of Acceptance pursuant to § 1 hereof shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all respects satisfactory to the Lessee. The Lessee will not assert any claim of any nature whatsoever against the Lessor based upon any of the matters described in the first paragraph of this § 11.

§ 12. Compliance with Laws and Rules.

(a) The Lessee agrees for the benefit of the Lessor to comply, and to cause any sublessees of the Units to comply, in all respects with (i) all laws of the jurisdictions in which operations involving the Units may extend (including, without limitation, laws with respect to the use, maintenance and operation of the Units), (ii) the interchange rules of the AAR and (iii) all rules of the Department of Transportation, the Interstate Commerce Commission (hereinafter called the ICC) and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units. In the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will comply therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the title of the Lessor to the Units or the rights of the Lessor under this Lease.

(b) The Lessee agrees, at its own cost and expense, to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent

permissible, file on behalf of the Lessor, and the Lessor hereby appoints the Lessee its agent and attorney-in-fact to do so) any and all reports, other than income tax returns, to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, their lease hereunder to the Lessee or their sublease to any railroad.

§ 13. Maintenance and Operation.

(a) The Lessee agrees that the Units will not be used or maintained predominantly outside the United States of America or in a manner which would cause any of the Units to cease to be "Section 38 property," as such term is defined in Section 48 of the Internal Revenue Code of 1954, as amended (the "Code").

(b) The Lessee agrees that, at its own cost and expense, it will at all times maintain and keep each Unit then subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted; provided, however, that in any event the Lessee shall maintain the Units in at least as good condition as required by the interchange rules of the AAR and as other railroad rolling stock leased or owned by the Lessee.

(c) Except as otherwise required by § 12 hereof, the Lessee shall not, without the Lessor's prior written consent, make or permit to be made any material alteration, addition or modification to any Unit, unless such alteration, addition or modification does not adversely affect the Unit's originally intended use or commercial value. Any and all additions to any Unit and any and all parts installed on and replacements made to any Unit (except equipment or devices which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit, which are not required pursuant to § 12 hereof and which may be readily removed from such Unit without materially affecting such Unit or the originally intended use or commercial value thereof) shall constitute accessions to such Unit and title thereto shall immediately vest in the Lessor. The Lessee shall, at its cost and expense, take all actions necessary to insure that title thereto, free from any lien, charge, security interest or encumbrance, shall immediately be vested in the Lessor. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which cannot be readily removed from such Unit without materially affecting such Unit or the originally intended use or commercial value thereof.

§ 14. Indemnification. The Lessee agrees to indemnify, protect and hold harmless the Lessor, its successors, assigns, agents and employees (hereinafter called Indemnified Persons) from and against all losses, damages, injuries, causes of action, judgments, liabilities, patent liabilities, penalties, interest, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, (including, but not limited to, fees and disbursements of counsel and costs of investigation) in any way relating to or arising out of or alleged to arise out of this Lease, any Event of Default, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person (herein collectively "Claims"). The indemnities arising under this § 14 shall continue in full force and effect notwithstanding the termination (scheduled or otherwise) of this Lease, and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person.

Without limiting the generality of the preceding paragraph, the Lessee shall indemnify each Indemnified Person against Claims relating to: (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit, (ii) any latent or other defects in any Unit whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claim based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or connected with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, or (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises from the negligence or willful misconduct of the Lessor if such Claim is due solely and directly to Lessor's acts or failure to act and does not arise from and is not based upon any act, failure to act or negligence of Lessee or any sublessee of any Unit. The Lessee and the Lessor agree to give each other promptly upon obtaining knowledge thereof written

notice of any claim or liability hereby indemnified against. The indemnities contained in this § 14 shall not extend to any Claim based upon or arising out of any act, failure to act or occurrence after the Units have been returned to Lessor as herein provided and the period for storage by Lessee has ended.

The Lessee shall be obligated under this § 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding.

In the event the Lessee is required to make any indemnification payment under this § 14, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. Upon the payment in full of any indemnities contained in this § 14 by the Lessee, and provided that no Event of Default or event or condition which with lapse of time or giving of notice or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 14 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

Nothing in this § 14 shall constitute a guaranty by the Lessee of the residual value of any Unit.

§ 15. Liens. The Lessee, at its own expense, will promptly pay or discharge any and all amounts claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the Lessor not related to the ownership, use, or possession of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor or the Lessee therein, and will promptly discharge or cause to be discharged any such lien, claim, security interest or other encumbrance which arises.

§ 16. Default. Each of the following events is herein called an Event of Default.

(a) Default shall be made in payment of any amount payable pursuant to § 3, hereof, and such default shall continue unremedied for ten business days.

(b) The Lessee shall make or permit any unauthorized assignment, sublease or other transfer of this Lease, or any interest herein or in any of the Units or default shall be made by the Lessee in the performance of any covenant set forth in § 9 hereof.

(c) Default shall be made by the Lessee in the observance or performance of any other of its covenants and agreements contained herein and such default shall continue unremedied for 30 days after written notice from the Lessor to the Lessee specifying such default and demanding that it be remedied.

(d) The Lessee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; or the Lessee shall take action for the purpose of effecting any of the foregoing.

(e) There shall be commenced against the Lessee without its application, approval or consent a proceeding under any bankruptcy, reorganization or insolvency law or which seeks reorganization of the Lessee or any substantial part of its assets or the appointment of a receiver, trustee or liquidator for the Lessee or any substantial part of its assets, or any substantial part of the assets of the Lessee shall be sequestered, or any creditor of the Lessee shall commence to foreclose a lien, charge or other encumbrance against any Unit, and in any case such proceeding, sequestration or foreclosure action shall continue unstayed and in effect for a period of 60 days.

(f) The Lessee or any Subsidiary shall default in any payment of any Indebtedness (other than any part of the rental payable by Lessee hereunder) beyond any period of grace provided with respect thereto, or shall default in the performance or any other agreement, term or condition contained in any agreement under which any such obligation is created, and (i) the effect of such default, if it occurs prior to the stated maturity or scheduled date for the payment thereof, is to cause, (a) Indebtedness, such rentals or other obligations to become due prior to the stated maturity or scheduled date for the payment thereof or (b) such agreement to be terminated; (ii) the aggregate principal amount of (a) Indebtedness, rentals and other obligations with respect to the payment of which the Lessee or any Subsidiary is so in default and (b) Indebtedness, rentals and other obligations which are so accelerated exceed 10% of the aggregate principal amount of all Consolidated Funded Debt at the time outstanding and (iii) such default is not cured and the related declaration of acceleration or termination is not revoked within 30 days after such event would, but for this clause (iii), constitute an Event of Default hereunder.

For purposes of this § 16(f), the following terms shall have the following meanings:

Capitalized Leases shall mean any leases of real or personal property required to be capitalized under generally accepted accounting principles as to which the Lessee or any Subsidiary is the lessee.

Capitalized Lease Rentals shall mean all rentals in respect of Capitalized Leases discounted in respect of each Capitalized Lease in accordance with generally accepted accounting principles.

Consolidated shall mean, with respect to the accounting item being described, such accounting item of the Lessee

and its Subsidiaries, as consolidated in accordance with generally accepted accounting principles including the elimination of intercompany items and transactions and after appropriate adjustment for any minority interests.

Debt or Indebtedness shall mean (i) all indebtedness of the Lessee or any Subsidiary for the repayment of borrowed money whether or not represented by bonds, debentures, notes or other securities, (ii) all Capitalized Lease Rentals, (iii) all indebtedness secured by any mortgage, pledge or lien existing on property or interests owned or held by Lessee or any Subsidiary (excluding any indebtedness for the satisfaction of which the sole recourse of the obligee is the equipment and the proceeds therefrom by which such indebtedness is so secured) whether or not the indebtedness secured thereby shall have been assumed or guaranteed by the Lessee or any Subsidiary, (iv) all indebtedness for borrowed money to the extent guaranteed by the Lessee or a Subsidiary and appearing as a contingent liability in the notes to such guaranteeing corporation's financial statements under generally accepted accounting principles and (v) all indebtedness incurred or assumed in connection with any merger, consolidation or acquisition of assets.

Any indebtedness of the Lessee and its Subsidiaries shall not be included in the computation of "Debt" or "Indebtedness" during such period upon or prior to the stated maturity or scheduled date for the payment thereof as, in compliance with the instrument creating or representing such indebtedness, there is on deposit irrevocably in trust with the proper depository funds or other assets for the payment or satisfaction of such indebtedness.

Funded Debt shall mean all Indebtedness which would in accordance with generally accepted accounting principles be classified as funded debt but in any event including all Indebtedness maturing by its terms more than one year after, or which is renewable or the maturity of which is extendable at the option of the obligor pursuant to the terms thereof for a period ending one year or more after the date of creation thereof, including current maturities thereon.

Subsidiary shall mean a corporation of which the Lessee owns, directly or indirectly, at least a majority of the outstanding voting stock.

The term "Subsidiary" shall also include a corporation of which Lessee and/or a Subsidiary, as defined above, own, directly or indirectly, at least a majority of the outstanding voting stock.

(g) Final judgments for the payment of money exceeding \$100,000 in the aggregate and not fully covered by insurance shall be rendered against the Lessee by courts of competent jurisdiction and shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed.

(h) Any representation or warranty made by the Lessee in this Lease or any document or certificate furnished to the Lessor in connection herewith or pursuant hereto shall prove to have been false or misleading in any material respect on or as of the date when made;

provided, however, that notwithstanding the foregoing to the contrary, if the Lessee shall not perform or observe the covenants contained in §§ 12(a) or 13(b), such failure shall not constitute an Event of Default hereunder if (i) the Units are not in the actual possession of the Lessee, (ii) the Lessee's failure to perform or observe such covenants is due to any act or failure to act of the Sublessee or any permitted sublessee hereunder, (iii) the Lessee is diligently asserting its rights against the Sublessee under the Sublease to compel performance of such covenants, (iv) such failure shall have been remedied within 90 days from the earlier of the date on which the Lessee obtains actual knowledge of such failure or the date on which the Lessor gives the Lessee notice of such failure and (v) such failure does not affect more than 15% of the Units at any time; provided, further, that the foregoing shall not relieve the Lessee of its obligation to return the Units upon expiration or earlier termination of this Lease in compliance with the provisions hereof, including, without limitation, those contained in §§ 12 and 13 hereof.

If an Event of Default shall occur, then at any time thereafter, during the continuance of any Event of Default, the Lessor, at its option, may:

(A) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of its obligations under this Lease or to recover damages for the breach hereof, including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(B) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents

enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors, sublessees or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, (i) a sum, with respect to each Unit, which represents either (I) the excess, if any, of (X) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over (Y) the present value, at the time of such termination of the rental which the Lessor reasonably estimates to be obtainable for such Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or, in the Lessor's sole discretion, (II) the excess, if any, of (X) the Casualty Value of such Unit as of the date of termination over (Y) the net proceeds of the sale of such Unit, if it has been sold, or the amount the Lessor reasonably estimates to be its net sales value, if it has not been sold, plus in any event (ii) any damages and expenses (including but not limited to, fees and disbursements of counsel) which the Lessor shall have sustained by reason of the breach of any covenant, agreement, representation or warranty contained in this Lease other than for the payment of rental, and (iii) amounts, if any, payable pursuant to § 21 hereof. If Lessee does not agree with Lessor's estimate pursuant to subclause (i)(I)(Y) above, such estimate shall be determined in the manner specified in § 23 for determining Fair Market Rental.

The remedies provided in this Lease shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Each party hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein

provided to the other party, to the extent that such waiver is not, at the time of its effect, prohibited by law.

The failure of the Lessor to exercise the rights granted to it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 17. Return of Units Upon Default. If this Lease shall be terminated pursuant to § 16 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition in which it is required to be maintained pursuant to §§ 12 and 13 hereof. The Lessee shall deliver to the Lessor at the time at which each Unit is so delivered a certificate executed by an officer of the Lessee to the effect that: (i) such Unit has no basic structural weaknesses and has suffered no damage which might cause an unsafe operating condition; and (ii) such Unit complies with all requirements of §§ 12 and 13 hereof. The Lessee shall deliver to the Lessor, if so requested by the Lessor, all maintenance records relating to all Units required to be redelivered pursuant to this § 17. If so requested by the Lessor, the Lessee shall at its own cost and expense, remark each Unit in the manner designated by the Lessor to add such markings as may be required by any purchaser or lessee of such Units and remove any additions or accessions thereto designated by the Lessor. For the purpose of delivering possession of the Units to the Lessor, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not limited to, giving prompt telegraphic and written notice to any sublessee of Units, to the AAR and to any railroads to which any Unit has been interchanged or which may have possession of any Unit to return such Unit or Units) assemble the Units and place them upon such storage tracks as the Lessor reasonably may designate;

(b) cause the Units or any of them to be stored at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the Units or any of them to such place as the Lessor reasonably may designate.

The assembling, delivery, storage, insurance and transporting of the Units shall be at the expense and risk of the Lessee and

are of the essence of this Lease. Upon application to any court of equity, having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee set forth in this § 17. During any storage period, the Lessee will, at its own cost and expense, perform all its obligations with respect to the Units pursuant to §§ 12, 13 and 15 hereof and will permit the Lessor or any person designated by it, including any authorized representative of any prospective purchaser of any Unit, to inspect the Units. The Lessee shall pay to the Lessor for each day after the termination of the Lease during which any Unit is not assembled, delivered and stored as provided in this § 17, an amount equal to the greater of (i) all amounts earned in respect of such Unit by the Lessee or any sublessee for such day or (ii) .026027% of the Purchase Price of such Unit. Without limiting the obligations of the Lessee pursuant to this § 17, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney-in-fact, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall then be in possession of such Unit.

§ 18. Assignment; Possession. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon receipt of such notice by the Lessee, the Lessee shall pay all rentals and other amounts payable hereunder directly to such assignee and all rights of the Lessor hereunder (including, but not limited to, the rights under §§ 3, 7, 8, 9, 16 and 21) shall inure to the benefit of such assignee (including the partners or any beneficiary of such assignee if such assignee is a partnership or a trust, respectively).

So long as no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, as against the Lessor and persons claiming through the Lessor, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer (including transfers by operation of law) its leasehold interest under this Lease in any Units, except that the Lessee may sublease any Units in accordance with § 22 hereof.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units. Notwithstanding the foregoing, so long as no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to sublease in accordance with § 22 hereof any Unit to any railroad incorporated under the laws of any State of the United States of America or the District of Columbia and any such sublessee may permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to runthrough agreements, but only upon and subject to all the terms and conditions of this Lease, including, without limitation, § 12(a) hereof. The rights of any sublessee of the Units are subject and subordinate to this Lease and the rights of the Lessor hereunder.

§ 19. Return of Units upon Expiration of Term. As soon as practicable after the expiration of the original or any extended term of this Lease, the Lessee, subject to the provisions of § 23 hereof, will, at its own cost and expense, deliver possession of the Units to the Lessor upon any storage tracks as the Lessor may designate within 500 miles of the present rail lines of the Sublessee or any permitted sublessee, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store the Units on such tracks for a period not exceeding two months and transport the same, at any time within such two month period, to any reasonable place on such rail lines as directed by the Lessor. The Lessee shall deliver to the Lessor at the time at which each Unit is so delivered a certificate executed by an officer of the Lessee to the effect that: (i) such Unit has no basic structural weaknesses and has suffered no damage which might cause an unsafe operating condition and (ii) such Unit complies with all requirements of §§ 12 and 13 hereof. The Lessee shall deliver to the Lessor, if so requested by the Lessor, all maintenance records relating to all Units required to be redelivered pursuant to this § 19. If so requested by the Lessor, the Lessee shall, at its own cost and expense, remark each Unit in the manner designated by the Lessor to add such markings as may be required by any purchaser or lessee of such Units and remove any additions or accessions thereto designated by the Lessor. The assembling, delivery, storage, insurance and transportation of the Units shall be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including any authorized representative of a prospective purchaser of any Unit, to inspect the same. Each Unit returned to the Lessor

pursuant to this § 19 shall be in the condition in which it is required to be maintained pursuant to §§ 12 and 13 hereof. The assembling, delivery, storage, insurance and transportation of the Units are of the essence of this Lease. Upon application to any court of equity, having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee set forth in this § 19. The Lessee shall pay to the Lessor for each day after the termination of this Lease during which any Unit is not assembled, delivered and stored as provided in this § 19 an amount equal to the greater of (i) all amounts earned by the Lessee or any sublessee in respect of such Unit for such day or (ii) .026027% of the Purchase Price of such Unit.

§ 20. Representations and Warranties. (a) The Lessee represents and warrants to the Lessor that as of the date hereof:

(i) The Lessee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite corporate power and authority to own its properties and carry on its business as presently conducted, and is duly qualified to do business and in good standing in each jurisdiction in which the failure to so qualify would materially adversely affect the financial condition of the Lessee or its ability to perform its obligations under this Lease or the Lessor's right, title and interest under this Lease or in any of the Units or the right of the Lessor to enforce the same.

(ii) The Lessee has all requisite corporate power to execute and deliver this Lease, the Purchase Agreement and the Assignment and to perform its obligations under each thereof.

(iii) The Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which would materially adversely affect its financial condition, business or operations or its ability to perform its obligations under this Lease.

(iv) The Lessee has heretofore delivered to the Lessor (1) its audited consolidated balance sheet as at, and its audited consolidated statements of income, retained earnings and changes in financial position for the years ended, December 31, 1975, December 31, 1976, and December 31, 1977 and (2) its unaudited consolidated balance sheet as

at June 30, 1978 and its unaudited consolidated statements of income, retained earnings and changes in financial position for the six month period then ended, all of which financial statements are correct and complete and fairly represent the financial condition of the Lessee as at the dates and for the periods reflected therein and were prepared in accordance with generally accepted accounting principles consistently applied (subject to any exceptions stated therein or in the notes thereto and, with respect to the statements referred to in subclause (2) above, to normal recurring year-end adjustments).

(v) Since June 30, 1978 there has been no material adverse change in the condition, financial or other, of the Lessee.

(vi) The execution, delivery and performance by the Lessee of this Lease will not conflict with, or result in a breach of, any provision of law, any regulation, order, injunction or decree of any court or governmental instrumentality, the corporate charter (as amended) or the by-laws (as amended) of the Lessee or of any note, material lease, conditional sale agreement, equipment trust agreement, mortgage, indenture, or other agreement or instrument to which the Lessee is now a party or by which it or any of its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default, or result in the creation of any lien, charge, security interest or other encumbrance upon any of the properties of the Lessee, under any such provision.

(vii) No authorization or approval is required from any governmental agency or commission or any public or quasi-public body or authority with respect to the execution, delivery or performance by the Lessee of this Lease or for the validity or enforceability hereof against the Lessee.

(viii) This Lease, the Purchase Agreement and the Assignment have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery thereof by the other parties thereto, are legal and valid agreements, binding upon the Lessee, enforceable in accordance with their respective terms, subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally.

(ix) Except for certain proceedings currently pending before the ICC, Ex-Parte 252 (Sub-Nos. 2 and 3) and Ex-Parte 334, involving per diem payments made by railroads for the use of freight cars, the final resolution of which, in the opinion of the Lessee, will not materially adversely affect its business or financial condition or the ability of the Lessee to pay, when due, the rentals and other amounts provided for in this Lease or to perform its obligations hereunder, there is no (i) action at law or in equity pending, or to the knowledge of the Lessee, threatened by or against (whether or not purportedly on behalf of the Lessee) or affecting the Lessee or any of its subsidiaries or properties or (ii) proceeding by or before any governmental commission, bureau or other administrative agency pending, or to the knowledge of the Lessee threatened, against the Lessee, which, in either case, if adversely determined would materially adversely affect the business or financial condition of the Lessee or the ability of the Lessee to pay when due the rentals and other amounts provided for in this Lease or to perform its obligations hereunder.

(x) The Lessee is not in default in any material regard with respect to any judgment, order, writ, injunction or decree of any court or Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality which materially and adversely affects its financial condition, business or operations or its ability to perform its obligations under this Lease.

(xi) The Lessee is not in default under any evidence of indebtedness, note, mortgage indenture, material lease, conditional sale agreement, equipment trust agreement or other material agreement or instrument and no obligee under any thereof has given the Lessee notice of any asserted default thereunder. For the purpose hereof, "material lease" shall mean any lease of real or personal property (other than this Lease, leases of office equipment for the use of the Lessee and leases of automobiles for the use of employees) entered into by the Lessee, as lessee, which has an unexpired term of more than one year, whether or not reflected in the balance sheet of the Lessee, and which provides for the payment of rental by the Lessee in any fiscal year in an aggregate amount exceeding \$100,000.

(xii) Neither the Lessee nor any agent or employee acting on its behalf has sold or offered any interest in

or right to acquire the Units (or any thereof) or any interest in any similar transaction for sale to, or solicited any offers to buy such interests or rights from, anyone except the Lessor and not more than twenty-five other institutional investors. Neither the Lessee nor any agent or employee acting on its behalf will sell or offer any such interests or rights for sale to, or solicit offers to buy such interests or rights from, any person or persons so as to bring the execution and delivery of this Lease within the provisions of Section 5 of the Securities Act of 1933, as amended.

(xiii) The Federal income tax liability of the Lessee and its consolidated subsidiaries has been examined and reported upon by the Internal Revenue Service (hereinafter called the Service) and satisfied for all fiscal years prior to and including the fiscal year ending December 31, 1969. The Lessee has filed all Federal, state and local tax returns which, to its knowledge, are required to be filed and has paid, or made provision for the payment of, all taxes which may be or become due pursuant to such returns or pursuant to any assessment received by the Lessee, other than taxes which are being contested in good faith and for which Lessee has provided an adequate reserve.

(xiv) Neither this Lease nor any memorandum, financial statement or certificate heretofore delivered to the Lessor by or on behalf of the Lessee in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

(xv) The Lessee estimates that, on the date of delivery and acceptance of each Unit pursuant to § 1 hereof, the remaining useful life of such Unit at the end of the original term of this Lease will be not less than 20% of the original term of this Lease and that each Unit will have a fair market value at the end of the original term of this Lease of not less than 20% of the Purchase Price of such Unit. Nothing contained in this Lease shall constitute a guaranty by the Lessee of the residual value of any Unit upon expiration of this Lease.

(xvi) The Sublease (as defined in § 22 hereof) has been duly authorized, executed and delivered by the Lessor and the Sublessee (as defined in § 22 hereof), is in full force and effect and constitutes a legal and

valid agreement, binding upon the Lessee and the Sublessee, enforceable against each of them in accordance with its terms; the Lessee has the corporate power to execute, deliver and perform the Sublease and to assign its rights thereunder to the Lessor pursuant to § 22 hereof and such rights are free of all claims, liens, charges, security interests or other encumbrances, except the rights of the Lessor under this Lease.

(b) The Lessor hereby represents and warrants to the Lessee that as of the date hereof:

(i) The Lessor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own its properties and carry on its business as presently conducted.

(ii) The execution, delivery and performance of this Lease and the Assignment by the Lessor have been duly authorized by all requisite corporate action.

(iii) The Lessor is acquiring its interest in the Units and this Lease for its account for investment, and not with a view to, or for sale in connection with, any distribution thereof nor with any present intention of distributing or selling such interests, but subject, nevertheless, to any requirement of law that the disposition of its property be at all times within its control.

§ 21. Income Tax Indemnity. This Lease has been entered into on the assumptions that:

(a) the Lessor, as the owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, but not limited to:

(X) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (hereinafter called the ADR Deduction), (i) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, 1977-1 C.B. 548, for property in Asset Guide-line Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date

hereof, (ii) employing initially the 200% declining-balance method of depreciation with a change, without the consent of the Service, to the straight line method of depreciation when most beneficial to the Lessor, (iii) including in the basis of the Units the entire Purchase Price thereof and all other items properly includable under Section 1012 of the Code, and (iv) calculated on the basis of the "half year" convention pursuant to Treasury Regulation 1.167 (a)-(11); and

(Y) the 10% investment tax credit with respect to the Purchase Price of each Unit pursuant to Section 38 and related sections of the Code (herein called Investment Credit);

(b) all amounts includable in gross income by the Lessor with respect to this Lease will be treated as income from sources within the United States of America; and

(c) the Lessor, as the owner of the Units, will for all state and local income tax purposes be entitled to the benefit of current deductions for depreciation with respect to the Units under the most accelerated method of depreciation allowable by applicable state or local law on the date hereof (hereinafter together with the ADR Deduction called the Depreciation Deduction)

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any return or other document inconsistent with the foregoing or which would increase the amount of rent required to be taken into income by the Lessor, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate the realization by the Lessor of the Depreciation Deduction, the Investment Credit, and the treatment as United States source income or loss. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine whether it is entitled to the full benefit of the Depreciation Deduction and the Investment Credit with respect to the Units and to treat amounts includable in gross income with respect to this Lease as income or loss from sources within the United States of America

If all or any part of the Investment Credit or the Depreciation Deduction shall be lost, disallowed, eliminated, reduced, unavailable or recaptured for any reason other than as set forth in the next succeeding paragraph or the Lessor shall

not be entitled to treat all amounts includable in gross income with respect to this Lease as income or loss from sources within the United States of America for any taxable year (or portion thereof) during which this Lease is in effect as a result of the location of any Unit outside the United States of America (any such loss, disallowance, elimination, reduction, unavailability, recapture or inability to treat as United States source income or loss is hereinafter called a Loss), then commencing with the next succeeding rent payment date after written notice to the Lessee by the Lessor that a Loss has occurred, each rental installment payable pursuant to § 3 hereof shall be increased by such amount as shall be required in the reasonable opinion of the Lessor (or, if such Loss shall occur after the termination of this Lease, the Lessee shall pay, as additional rent, to the Lessor on demand such amount in a single installment), after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local governmental or taxing authority, to cause the Lessor's net after-tax cash flow and net after-tax rate of return to be the same as if such Loss had not occurred.

Notwithstanding anything contained in the immediately preceding paragraph to the contrary, the Lessee shall have no obligation to pay any amount in respect of a Loss, if and to the extent that such Loss results directly and solely from the occurrence of any of the following events:

(i) a transfer by the Lessor of legal title to any Unit or a disposition by the Lessor of any interest in any Unit (other than such a transfer or disposition to a member of the Consolidated Group, as hereinafter defined) unless, in each case, (X) an Event of Default shall have occurred and be continuing; or (Y) such transfer or disposition shall occur as a result of any act or failure to act of the Lessee or any sublessee or the failure of the Lessee or any sublessee to perform or fulfill any covenant, obligation, representation or warranty hereunder or under any sublease permitted by the terms hereof;

(ii) the failure of the Lessor properly to claim the Depreciation Deduction (or any portion thereof) or the Investment Credit on any of its income tax returns for the appropriate year, unless the Lessor shall have received an opinion, of independent tax counsel reasonably satisfactory to the Lessee, to the effect that the Lessor is not entitled to claim the Depreciation Deduction (or such portion thereof) or the Investment Credit;
or

(iii) the failure of the Lessor to have sufficient gross income or tax liability to benefit from the Depreciation Deduction or the Investment Credit, respectively

If the Lessor has suffered the realization of taxable income as a result of the making or installation by the Lessee of, or the payment by the Lessee of the cost of, any improvement, modification, accession or addition to any Unit or the payment by the Lessee to the Lessor or in respect of any Unit of any amount other than pursuant to §§ 3, 7, 8, 21 hereof or if the maximum corporate income tax rate in effect on the date hereof imposed upon the Lessor's net income is changed by any Federal, state or local governmental or taxing authority (whether by legislation which directly changes such rate or by legislation which otherwise amends existing law with the effect of changing such rate), then, in either such event, effective with the next rent payment date, each rental installment payable pursuant to § 3 hereof shall be increased (or, if such maximum corporate income tax rate in effect on the date hereof is increased, each rental installment shall be decreased) by such amount as shall be required, in the reasonable opinion of the Lessor, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local governmental or taxing authority, to cause the Lessor's net after-tax cash flow and net after-tax rate of return to be the same as if such income realization or tax rate change, as the case may be, had not occurred.

In addition to, and concurrently with, any payments required to be made pursuant to this § 21, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local governmental or taxing authority, is equal to the amount of any interest and penalties (including additions to tax because of underpayment of estimated tax) payable by the Lessor which are attributable to any Loss, or to any income realization or tax rate change referred to in the immediately preceding paragraph.

In the event a claim shall be made against the Lessor which, if successful, would result in payment by the Lessee of increased rental and if, in the reasonable opinion of independent tax counsel selected by the Lessor and acceptable to, and at the expense of, the Lessee (hereinafter called Counsel), a bona fide defense to such claim exists, the Lessor shall, upon the request and at the expense of the Lessee, take all such legal or other action deemed reasonably appropriate by Counsel in order to sustain such defense; provided, however, that the Lessor shall not be obligated to take any such legal or other

action unless the Lessee shall first have provided indemnification satisfactory to the Lessor for all liabilities and expenses (including without limitation fees and expenses of counsel) that may be entailed therein and shall have posted any such bonds as may be required by any governmental or taxing authority or court, having jurisdiction. The Lessor may, at its option, take such action prior to making payment of any tax, interest or penalty with respect to such claim (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund.

If the Lessor takes such action prior to making such Tax Payment, such increased rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rent shall be computed as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rent an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local governmental or taxing authority, will equal the amount of all interest and penalties paid by the Lessor in respect of such final determination.

If the Lessor makes such Tax Payment and then sues for a refund, such increased rent shall commence to be payable by the Lessee on the first rent payment date after such Tax Payment is made and, on or before such rent payment date, the Lessee shall pay to the Lessor as additional rent an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local governmental or taxing authority, will equal the amount of all interest and penalties paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor the rent payable by the Lessee to the Lessor for the remainder of the term of this Lease shall be adjusted by such amount as shall be required, in the reasonable opinion of Counsel utilizing the assumptions set forth in the first paragraph of this § 21, to cause the Lessor's net after-tax cash flow and net after-tax rate of return for the entire term of this Lease to be the same as such net after-tax cash flow and net after-tax rate of return would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such adjusted rent shall be payable by the Lessee

commencing upon the rent payment date next succeeding such final determination.

In the event that the Lessee shall pay all or any portion of any rental installment prior to the date upon which such payment is required to be made pursuant to § 2 hereof, the Lessee shall pay to the Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision or any taxing authority thereof, shall be equal to the excess of (i) the taxes and other charges payable by the Lessor as a result of the receipt of such rental installment over (ii) the taxes and other charges that would have been payable by the Lessor had such rental installment been paid by the Lessee on the date upon which such payment was required to be made.

In the event the rent payable pursuant to § 3 hereof shall be adjusted as provided in this § 21, the Casualty Values set forth in Schedule B hereto and incorporated in § 8 hereof shall be adjusted accordingly.

For the purpose hereof, "Consolidated Group" shall mean any group filing consolidated Federal income tax returns of which the Lessor is a member. For the purpose of this § 21, "Lessor" shall include any successor to the Lessor and any member of the Consolidated Group.

The agreements of the Lessee and the Lessor to pay any amounts which may become payable pursuant to this § 21 shall survive the termination (whether at the expiration of the term, upon the occurrence of an Event of Default or otherwise) of this Lease. The obligations of the Lessee pursuant to this § 21 are in addition to all other payment obligations of the Lessee pursuant to this Lease, including without limitation those set forth in § 16 hereof.

§ 22. Assignment of Sublease; Additional Subleases.
As security for the payment of rent and all other amounts due hereunder and for the payment and performance of the Lessee's obligations hereunder, the Lessee hereby assigns, transfers and sets over unto the Lessor, all of its right, title, interest, powers, privileges and other benefits in, to and under, and hereby grants to the Lessor a security interest in, the Lease Agreement dated as of September 1, 1978 and Schedule Number 02 thereunder (hereinafter called the Sublease) between the Lessee and the Providence and Worcester Company (herein called the

Sublessee) to the extent the Sublease relates to Units, including, but not limited to, the right to receive all rentals, claims for damages and insurance proceeds to the extent they relate to Units. In order to accomplish such assignment and grant of security interest, the Lessee has heretofore transferred to the Lessor a copy of the Sublease and the original counterpart of Schedule Number 02 to the Sublease, which has been marked "Original". All other counterparts thereof have been marked as "Duplicates" and are duplicates.

The Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, upon the occurrence and during the continuation of an Event of Default, with full power and authority in the name of the Lessee, the Lessor or either of them to demand, sue for, enforce, collect and receive and receipt for, the Sublease (to the extent it relates to Units), any proceeds thereof or the Units and to apply the same to the Lessee's obligations under this Lease. At any time during the continuance of an Event of Default, the Lessee shall, upon the written request of the Lessor, at the sole expense of the Lessee, notify the Sublessee and any other party obligated to make payments in respect of the Sublease (to the extent it relates to Units) to make such payments directly to the Lessor.

This assignment is executed only as security for the obligations of the Lessee under this Lease and, therefore, the execution and delivery of this assignment shall not subject the Lessor to, transfer to the Lessor or in any way affect or modify, the liability of the Lessee under the Sublease, it being understood and agreed that notwithstanding this assignment or any subsequent assignment, all obligations of the Lessee to the Sublessee shall be enforceable by the Sublessee, its successors and assigns only against the Lessee or persons other than the Lessor.

Whenever the Sublease covers equipment other than the Units and the amount of any payment due to the Lessee under the Sublease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Units. For the purpose hereof, "Assigned Fraction" shall mean a fraction the numerator of which is the number of Units leased under the Sublease and the denominator of which is the aggregate number of units of equipment (including such Units) at the time leased under the Sublease.

Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee may terminate the Sublease for any reason consistent with the terms thereof and may sublease the Units to any other railroad incorporated under the laws of any State of the United States of America or the District of Columbia, but no such sublease shall be effective until the Lessee shall have delivered to the Lessor (i) the duly executed original counterpart thereof which shall expressly provide that it is subordinate to this Lease and that the sublessee's rights thereunder are subject to all the terms and conditions hereof; (ii) an instrument pursuant to which the Lessee assigns to the Lessor and grants it a security interest in such sublease upon terms comparable to those set forth in the first four paragraphs of this § 16; (iii) an acknowledgement copy of a financing statement on form UCC-1 filed in the office of the Secretary of State of the State of California, or such other office as may then be appropriate, with respect to the assignment of such sublease, indicating the Lessee, as debtor, and the Lessor, as secured party, duly stamped by a filing officer to indicate the date and time of filing and the filing number; (iv) evidence that such sublease and the assignment thereof have been filed with the ICC; and (v) an opinion of counsel with respect to such filings satisfactory to the Lessor.

§ 23. Renewal Option and Right of First Refusal.
Provided that this Lease has not been earlier terminated and no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee may, by written notice delivered to the Lessor not less than four months prior to the end of the original term of this Lease, renew this Lease with respect to all but not less than all of the Units then subject to this Lease. Such renewal shall be upon the terms and conditions set forth herein except that the rent payable pursuant to § 2 hereof shall be the Fair Market Rental (as hereinafter defined) for such Units. The term for which this Lease may be so renewed shall be a single period designated by the Lessee equal to any number of whole years up to a maximum of five commencing immediately upon the expiration of the original term hereof.

For the purpose hereof, the "Fair Market Rental" of any Unit shall be equal to the rental obtainable in an arms' length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, the costs of removal from the location of current use shall not be a deduction from such

value. If on or before 60 days after the Lessee has timely elected to renew this Lease, the Lessor and the Lessee shall not have agreed upon the Fair Market Rental for the Units then subject to this Lease, such Fair Market Rental shall be determined by a qualified independent appraiser selected by mutual agreement between the Lessor and the Lessee, or failing such agreement, by a panel of three independent appraisers, one of whom shall be selected by the Lessor, one of whom shall be selected by the Lessee, and the last of whom shall be designated by the two appraisers so selected. If either the Lessor or the Lessee refuses or fails to appoint an appraiser or a third appraiser cannot be agreed upon by the other two appraisers within 90 days after the Lessee has timely notified the Lessor of its election to renew this Lease, such appraiser or appraisers shall be selected in accordance with the rules for commercial arbitration of the American Arbitration Association. The appraiser or appraisers selected shall be instructed to make the determination of Fair Market Rental for the Units then subject to this Lease within 30 days following the appointment of the last appraiser to be appointed and to promptly communicate such determination to the Lessor and the Lessee in writing. The determination of the Fair Market Rental for the Units then subject to this Lease so made by such appraiser or appraisers shall be binding upon the Lessor and the Lessee. The fees and expenses of any such appraisers and the expenses of any such appraisal proceeding shall be borne by the Lessee.

Subject to the provisions of the first paragraph of this § 23, if the Lessor shall propose, at any time during the original or renewal term of this Lease or within three months thereafter, to sell or to contract to sell the Units on or after the expiration of the original or renewal term of this Lease to any person other than a member of the Consolidated Group and shall have received a bona fide offer from such a person to purchase any or all of the Units, it shall so notify the Lessee in writing, specifying the price and material terms and conditions pursuant to which it proposes to sell such Units. Provided that no Event of Default or event or condition which with the giving of notice or passage of time or both would constitute an Event of Default shall have occurred and be continuing, the Lessee shall have the option, exercisable within 10 business days after the receipt of such notice from the Lessor, to purchase all but not less than all of the Units proposed to be sold by the Lessor at the price, and upon the material terms and conditions, at which the Lessor proposes to sell such Units. In the event that the Lessee so purchases any Unit, upon payment by the Lessee of the purchase price therefor, the Lessor shall execute and deliver to the Lessee or the Lessee's assignee or nominee a bill of sale for such Unit on an "as is, where is" basis without any representation or warranty

by, or recourse to, the Lessor. The Lessee shall pay or cause to be paid all sales and use taxes payable in connection with such sale to it of any Unit and all unpaid property taxes theretofore assessed or levied against such Unit.

§ 24. Interest on Overdue Amounts. If the Lessee shall fail to pay when due any installment of rent or other amount due hereunder, the Lessee shall promptly pay to the Lessor, upon demand, interest on such overdue amount for the period for which payment is overdue at a rate equal to the lesser of 10% per annum or the maximum rate permitted by law.

§ 25. Notices. Any notice required or permitted to be given to either party hereto shall be deemed to have been given two business days after mailing, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, to it at

425 California Street
San Francisco, CA 94104
Attention: Contract Administration

(b) if to the Lessee, to its Rail Division at

Two Embarcadero Center
San Francisco, CA 94111
Attention: Treasurer

or addresssed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 26. Effect and Modification. This Lease, including the Schedules and Exhibits hereto, exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, commitments and expressions of intent, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of the provisions or conditions hereof shall be valid unless in writing and signed by duly authorized officers of both the Lessor and the Lessee.

§ 27. Execution; Recordation. This Lease may be executed in several counterparts, all of which shall constitute one and the same instrument, but the counterpart delivered to the Lessor and stamped "Original" shall be the original hereof and the only counterpart which constitutes chattel paper and all other counterparts shall be duplicates. This Lease is dated for convenience as of the date first above written, but

the actual date or dates of execution hereof are the dates stated in the acknowledgments attached hereto.

The Lessee will from time to time do and perform any action and will execute, acknowledge, deliver, file, register, record (and will refile, reregister and redeposit and re-record whenever required) any and all further instruments, including, but not limited to, continuation statements on form UCC-2 and additional permitted subleases, required by law or reasonably requested by the Lessor for the purpose of properly protecting the Lessor's right, title and interest under this Lease and in the Units or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor evidence of all such filings, registrations, or recordations and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

§ 28. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers as of the date first above written.

WELLS FARGO TRANSPORT LEASING CORPORATION

By

Ronald E. Owen
SENIOR VICE PRESIDENT

[Corporate Seal]

Attest:

By

Charles A. Long
SENIOR VICE PRESIDENT

Sylvia K. Knight

ITEL CORPORATION,
acting through its Rail Division

By

Laura P. Schneider

[Corporate Seal]

Attest:

David N. Kuhn

APPROV
<i>SAZ</i>
LEGAL C
WELLS F
LEASING

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF SAN FRANCISCO)

On this 10th day of October, 1978, before me personally appeared Ronald E. Dean and Charles A. Greenberg, to me personally known, who, being by me duly sworn, say that they are a Senior V.P. and Senior V.P., respectively of WELLS FARGO TRANSPORT LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Mary Margaret Shypert
Notary Public

[Notarial Seal]

My Commission expires: 4-4-81



STATE OF CALIFORNIA

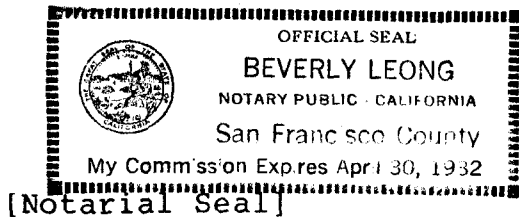
)

)

ss.

CITY AND COUNTY OF SAN FRANCISCO)

On this 11th day of October 1978, before me personally appeared EDWARD P. SCHNEIDER, to me personally known, who, being by me duly sworn, says that he is a Vice President of ITEL CORPORATION, Rail Division, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Beverly Leong
Notary Public

My Commission Expires: 4-30-82

Schedule A

<u>UNITS</u>						
<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Place of Delivery</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Identifying Numbers of Lessee or Sublessee (Both Inclusive)</u>
Flatcars	TOFC/COFC	100	St. Louis, Missouri	\$42,419.34	\$4,241,934	PW 105101-105200

SCHEDULE B

CASUALTY VALUES

<u>From and Including Rent Payment Date Number</u>	<u>To But Not Including Rent Payment Date Number:</u>	<u>Casualty Val as a Percent of Purchase F</u>
*	1	104.488**
1	2	102.129
2	3	101.245
3	4	100.349
4	5	99.439
5	6	98.516
6	7	97.579
7	8	96.628
8	9	95.663
9	10	94.685
10	11	93.691
11	12	92.684
12	13	91.661
13	14	90.623
14	15	89.570
15	16	88.502
16	17	87.417
17	18	86.317
18	19	85.201
19	20	84.068
20	21	82.919
21	22	81.752
22	23	80.569
23	24	79.368
24	25	78.149
25	26	76.912
26	27	75.658
27	28	74.384
28	29	73.092
29	30	71.781
30	31	70.451
31	32	69.101

CASUALTY VALUES

<u>From and Including Rent Payment Date Number</u>	<u>To But Not Including Rent Payment Date Number:</u>	<u>Casualty Valu as a Percenta of Purchase Pr</u>
32	33	67.732
33	34	66.342
34	35	64.931
35	36	63.500
36	37	62.048
37	38	60.575
38	39	59.079
39	40	57.562
40	41	56.023
41	42	54.461
42	43	52.875
43	44	51.267
44	45	49.635
45	46	47.979
46	47	46.298
47	48	44.593
48	49	42.862
49	50	41.106
50	51	39.325
51	52	37.517
52	53	35.682
53	54	33.821
54	55	31.932
55	56	30.015
56	57	28.070
57	58	26.097
58	59	24.094
59	60	22.375
60	Until End of Lease	20.000

*From and including the date of delivery and acceptance for each Unit.

**Plus the interim rental for any Unit payable pursuant to § 3(b) of the Lease on the Base Term Lease Commencement Date.

The Casualty Values set forth above do not take into account any loss of investment tax credit or depreciation deductions.

CERTIFICATE OF ACCEPTANCE

ITEL Corporation, Rail Division, (hereinafter called the Lessee) certifies that:

(a) the terms used herein shall have the respective meanings defined in the Lease of Railroad Equipment dated as of October 1, 1978 (hereinafter called the Lease) between the Lessee and the Wells Fargo Transport Leasing Corporation (hereinafter called the Lessor);

(b) the undersigned is a duly authorized representative of the Lessee;

(c) the Units listed below have been inspected and found to have been completed in conformity with the Purchase Agreement and the applicable specifications, requirements and standards referred to therein:

<u>Number of Units</u>	<u>Identifying Numbers</u>	<u>Place of Acceptance</u>	<u>Date of Acceptance</u>
		St. Louis, Missouri	

(d) the Lessee, as the agent of the Lessor under the Lease, has accepted delivery of such Units under the Purchase Agreement;

(e) the Lessee hereby accepts delivery of such Units under the Lease, upon the terms and subject to the conditions set forth therein;

(f) such Units conform to all applicable ICC requirements and specifications, to all standards recommended by the AAR and to all requirements of the Lease;

(g) nothing contained in this Certificate of Acceptance is intended to or shall relieve the Builder of any of its warranties set forth or referred to in the Purchase Agreement; and

(h) such Units have been marked permanently and conspicuously in letters not less than one inch in height with the words: "WELLS FARGO TRANSPORT LEASING CORPORATION, OWNER AND LESSOR UNDER A LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Dated:

ITEL CORPORATION,
acting through its Rail Division

By _____

Representative

ASSIGNMENT OF PURCHASE AGREEMENT

DATED AS OF OCTOBER 1, 1978

Between

ITEL CORPORATION,
acting through its Rail Division,
as Assignor

and

WELLS FARGO TRANSPORT LEASING CORPORATION,
as Assignee

ASSIGNMENT OF PURCHASE AGREEMENT dated as of October 1, 1978 Between ITEL CORPORATION (acting through its Rail Division), a Delaware corporation (hereinafter called the Assignor), and WELLS FARGO TRANSPORT LEASING CORPORATION, a California corporation (hereinafter called the Assignee).

WHEREAS, the Assignor has entered into a contract dated as of February 24, 1978 (hereinafter called the Purchase Agreement) with ACF Industries Incorporated (hereinafter called the Builder), pursuant to which the Builder has agreed to manufacture, sell and deliver to the Assignor the units of railroad equipment described in Schedule A hereto, which consist of 100 flatcars (hereinafter called the Units); and

WHEREAS, the Assignor desires to assign its rights under the Purchase Agreement to the Assignee and when the Units are delivered under the Purchase Agreement to lease them from the Assignee pursuant to a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease);

NOW THEREFORE in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor and the Assignee agree as follows:

1. The Assignor hereby sells, assigns, transfers and sets over unto the Assignee, and its successors and assigns, all of the Assignor's right, title and interest in and to the Purchase Agreement and the Units.

2. The right, title and interest assigned pursuant to § 1 hereof, shall include, but shall not be limited to: (i) the right to accept delivery of the Units pursuant to the Purchase Agreement and to take title to the Units pursuant to a bill of sale from the Builder; and (ii) all claims for damages arising from any failure of the Builder to perform or observe any of the terms of the Purchase Agreement and all rights, benefits and claims under all warranties contained in the Purchase Agreement and any other amounts which may become payable by the Builder under the Purchase Agreement.

3. Anything contained herein to the contrary notwithstanding: (i) the Assignor shall at all times remain liable to the Builder under the Purchase Agreement for the performance of all its duties and obligations thereunder to the same extent as if this Assignment had not been executed; (ii) the exercise by the Assignee of any of the rights assigned to it hereunder shall not release the Assignor from any of its duties or obligations to the Builder under the Purchase Agreement.

4. The Assignor agrees that at any time and from time to time, upon the written request of the Assignee, the Assignor will promptly execute and deliver any such further instruments and documents and take such further actions as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights assigned hereby.

5. The Assignor represents and warrants that: (i) the Purchase Agreement is in full force and effect and is enforceable in accordance with its terms; (ii) the Assignor is not in default thereunder, (iii) the Assignor has not heretofore assigned or pledged the whole or any part of the rights assigned hereby to the Assignee; (iv) none of the Units has been delivered by the Builder under the Purchase Agreement; and (v) the Assignor has made no payments to the Builder in respect of the Units or any of them. The Assignor covenants and agrees that so long as this Assignment shall remain in effect, it will not assign or pledge the whole or any part of the rights assigned hereby.

6. The only obligation or liability of the Assignor under the Purchase Agreement assigned hereby to the Assignee is the obligation to pay the purchase price, as provided in the Purchase Agreement, for any Units delivered and accepted under the Purchase Agreement; provided, however, that the Assignee shall have no obligation or liability to purchase or pay for any Unit which shall not have been delivered to and accepted by the Lessee on or before December 29, 1978, for any Unit if the aggregate Purchase Price for such Unit and any Units theretofore delivered and accepted shall exceed \$4,500,000 or for any Unit with respect to which one or more of the other conditions set forth in § 2 of Lease shall not have been satisfied.

7. In the event that the Assignee shall, pursuant to the proviso to § 6 hereof, not theretofore have purchased and paid for any Units, the Assignee shall on December 30, 1978 either waive (conditionally, partially or absolutely) the conditions which have not been satisfied or reassign to the Assignor its rights under this Assignment relating to the Units not theretofore delivered and accepted under the Purchase Agreement.

8. The Assignor agrees to cause this Assignment to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act.

9. This Assignment shall be governed by, and construed in accordance with, the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the Assignor and the Assignee
have caused this Assignment to be executed by their duly
authorized officers as of the date first above written.

[Corporate Seal]
Attest:

ITEL CORPORATION,
acting through its Rail Division

By _____

[Corporate Seal]
Attest:

WELLS FARGO TRANSPORT LEASING
CORPORATION

By _____

By _____

STATE OF CALIFORNIA)
) ss:
CITY AND COUNTY OF SAN FRANCISCO)

On this ____ day of October, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of ITEL CORPORATION, Rail Division, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Notary Public

[Notarial Seal]

My Commission expires:

STATE OF CALIFORNIA)
) ss:
CITY AND COUNTY OF SAN FRANCISCO)

On this ____ day of October, 1978, before me personally appeared _____ and _____, to me personally known, who, being by me duly sworn, say that they are a _____ and _____, respectively of WELLS FARGO TRANSPORT LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Notary Public

[Notarial Seal]

My Commission expires:

SCHEDULE A

<u>UNITS</u>						
<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Place of Delivery</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Identifying Numbers of Lessee or Sublessee (Both Inclusive)</u>
Flatcars	TOFC/COFC	100	St. Louis, Missouri	\$42,419.34	\$4,241,934	PW 105101-105200

CONSENT TO ASSIGNMENT
DATED AS OF OCTOBER 1, 1978
BY
ACF INDUSTRIES INCORPORATED

CONSENT TO ASSIGNMENT Dated as of October 1, 1978
by ACF Industries Incorporated (hereinafter called
the Builder)

WHEREAS, ITEL Corporation, acting through its Rail Division, (hereinafter called the Lessee) has entered into a contract dated as of February 24, 1978 (hereinafter called the Purchase Agreement) with the Builder pursuant to which the Builder has agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A to the Lease (as hereinafter defined), which consist of 100 flatcars (hereinafter called the Units);

WHEREAS, the Lessee is assigning to Wells Fargo Transport Leasing Corporation (hereinafter called the Lessor) all its rights under the Purchase Agreement pursuant to an Assignment of Purchase Agreement dated as of the date hereof (hereinafter called the Assignment); and

WHEREAS, the Lessee will lease the Units from the Lessor pursuant to a Lease of Railroad Equipment dated as of the date hereof (herein called the Lease);

NOW THEREFORE, in consideration of the covenants contained in the Assignment, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Builder hereby agrees with the Lessee and the Lessor as follows:

The Builder hereby confirms to the Lessor that the Lessee is not in default under the Purchase Agreement.

IN WITNESS WHEREOF, the Builder has caused this Consent to Assignment to be executed by its duly authorized representative as of the date first above written.

ACF INDUSTRIES INCORPORATED

By _____

STATE OF NEW YORK

)

) ss:

COUNTY OF NEW YORK

)

On this ____ day of October, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is a _____ of ACF INDUSTRIES INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Notary Public

[Notarial Seal]

My Commission expires:

EXHIBIT IV

CERTAIN ADDITIONAL INFORMATION
TO BE PROVIDED IN A COMPOSITE
CERTIFICATE OF ACCEPTANCE

The Lessee shall deliver to the Lessor on the Base Term Lease Commencement Date a Certificate of Acceptance for all Units, executed by an appropriate officer of the Lessee, substantially in the form attached to the Lease as Exhibit I, to which shall be added the following paragraph:

"(i) the Lessee shall pay to the Lessor, as rent for such Units pursuant to § 3 of the Lease, (I) as basic rent, the aggregate amount of _____ dollars (\$_____) in 60 consecutive quarterly installments of _____ dollars (\$_____) each, payable in advance, commencing on the Base Term Lease Commencement Date, and (II) as interim rental for all Units, an aggregate amount equal to _____ dollars (\$_____) payable in arrears on the Base Term Lease Commencement Date.